IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Bail Appl..No. 5020 of 2007()

CRIME NO.363/07 OF PUTHENCRUZ POLICE STATION

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: PETITIONERS/A1 & A2

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1. K.C.THAMPI, AGED 39, S/O.CHACKO,
KUZHIVELIPUTHENPURAYIL, MATTAKKUZHI KARA,
KOKKAPPILLY P.O., THIRUVANIYOOR VILLAGE.

2. SHANMUGHAN, AGED 37, S/O.VELAYUDHAN,
PAZHAYIDATHU HOUSE, KAKKADU KARA,
MAMALA P.O. THIRUVANIYOOR VILLAGE.

BY ADV. SRI.C.P.UDAYABHANU

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
S.I. OF POLICE, PUTHENCRUZ POLICE STATION,
(CRIME 363/07) REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5020 of 2007

Dated this the 20th day of August, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 and 2. Altogether there are 4 accused persons. Accused 3 and 4 are allegedly the owners of a parcel of land. Accused 1 and 2 are persons who are resorting to blasting of rocks using explosive substances in the property of accused 3 and 4. The petitioners allegedly do not have any requisite licence under the Explosive Substances Act to carry out the quarrying operation. Because of such illegal use of explosives for the purpose of blasting the rock, rock pieces allegedly fell on the factory of the defacto complainant and that obliged the defacto complainant to make a complaint before the police. The crime has been registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are innocent. They are only the workers employed by accused 3 and 4. Admittedly there is no claim that either the petitioner or accused 3 and 4 have any requisite authority under the Explosive Substances Act to use the explosives and carry out the quarrying operation. According to the prosecution, the petitioners are

the ones who are making use of the explosives and undertaking the blasting operation in the property of accused 3 and 4.

3. The learned counsel for the petitioners mainly contends that the petitioners are only employees and it would be harsh to proceed against them. Custodial interrogation is not necessary at all. There has been no untoward incident whatsoever. Such quarrying operation has been going for a long period of time - exceeding 25 years. The defacto complainant has actuated by ulterior motives to make such a complaint.

4. The application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that the allegation is serious. Explosive substances have been made use of without the requisite permission/sanction from the authorities. The defacto complainant, a neighbour is aggrieved by consequence of such explosion. Admittedly there is no leave/licence obtained. In these circumstances, there is no justification in the prayer for invocation of the powers under Section 438 Cr.P.C, submits the learned Public Prosecutor . It is further submitted that the petitioners are stopped the quarrying operation after the registration of the crime.

5. I have considered all the relevant inputs and having considered all the relevant circumstances, I am not at all persuaded to

agree that this is a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioners. This I am satisfied is an eminently fit case where the petitioners must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-